



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matters of K.D., Division on
Civil Rights

CSC Docket No. 2019-3632

Discrimination Appeal

ISSUED: APRIL 17, 2020 (SLK)

K.D., a Legal Specialist with the Division on Civil Rights, Department of Law and Public Safety, appeals the decision of the Director, Office of Equal Employment Opportunity (EEO), which did not substantiate her allegation that she was subjected to a violation of the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, K.D., a Caucasian female, alleged that she was subjected to discrimination based on race and/or gender by P.F., an African-American male former Assistant Division Director¹. Specifically, K.D. alleged that P.F. made an inappropriate comment to her in a private meeting regarding a training session where they both were presenters. She alleged that P.F. had a list of criticisms regarding her performance at the training, including that he believed that K.D. made off-topic and racially insensitive comments about the mortgage crisis and bias crimes. Further, K.D. alleged that P.F. stated that she was “like Megyn Kelly” during the same meeting, which she took as him implying that she was a “white racist.” The EEO determined that K.D.’s allegations did not touch the State Policy as there was no evidence or allegation that the alleged conduct

¹ Personnel records indicate that P.F. retired on May 31, 2019.

stemmed from K.D.'s membership in a protected class. Therefore, the EEO did not open a formal investigation.

On appeal, K.D. presents that during and after a presentation that she made with P.F., he started yelling at her claiming that she was trying to "upstage him" and she failed to "give him his due respect." She indicates that she identified two African-American employees who witnessed P.F.'s behavior towards her who were not interviewed. Further, in an after-presentation critique which took place approximately two weeks after the presentation, P.F. yelled, insulted and denigrated K.D. and "white people" loudly. She indicates that she identified two witnesses of the yelling; yet those witnesses were not interviewed. Specifically, K.D. alleged that P.F. said that she was "like Megyn Kelly", who is a Caucasian female newscaster fired for allegedly making racist remarks. Additionally, P.F. reprimanded her for mentioning a hate-crime where an older Caucasian Jewish male was murdered by a younger African-American male by stating that she should not mention the race of the victim or perpetrator because that made her "racist, like Megyn Kelly." Moreover, P.F. allegedly told K.D., "that is not how it goes down with bias crimes; everyone knows whites are the problem for bias crimes" and that P.F. said, "I just don't get it" when K.D. objected to P.F.'s comments about hate crimes." Additionally, P.F. said to K.D., "you are fired" when she objected to the Megyn Kelly name-calling and walked out of the meeting. K.D. also states that the determination failed to address her allegation of retaliation.

K.D. alleges that the determination ignores her membership in protected classes based on gender and race. She highly doubts that P.F. would have called a male employee or an African-American employee "Megyn Kelly." K.D. argues that these comments were made because she was a Caucasian female. She finds these comments offensive as she has been a civil rights employee for many years. K.D. believes that P.F.'s yelling at her in public that she was not giving him his "due respect" was clearly motivated by race and gender. She complains that the determination did not address all of her allegations as stated on appeal, including her being fired, retaliation, workplace harassment, and violating federal law under the State Policy.

In response, the appointing authority, represented by Steven Morris, Deputy Attorney General, indicates that the EEO concluded there was no evidence that P.F. yelled at K.D. during or after the presentation based on her membership in a protected class. Similarly, with regard to K.D.'s allegation that P.F. grabbed her hand during the presentation and brought her over to a group of attendees, the EEO found that this was done because he wanted her to stay and help him answer the attendees' questions and not because of her gender. Further, there was no evidence that P.F.'s criticism of K.D. during the after-presentation critique session was based on her race or gender. In reference to the "Megyn Kelly" comment, the EEO determined that P.F. was not making a discriminatory comment. Instead, he

was using Megyn Kelly as an example to explain that K.D.'s comments about predatory lending in the mortgage industry leading to the housing bust and bias crimes against an older Caucasian male by a younger African-American male could be perceived by others as racially insensitive or offensive even if the speaker does not intend them that way. Finally, the EEO determined that other comments between K.D. and P.F. that touched on race-related issues were the result of K.D.'s comments that P.F. felt were insensitive. Additionally, it found that P.F. stating that he believed that K.D. made off-topic and racially insensitive comments regarding the mortgage crisis and bias crimes was not discriminatory. Instead, their disagreements concerning racial aspects of these topics simply reflected a personality dispute and philosophical differences between them which did not implicate the State Policy.

CONCLUSION

N.J.A.C. 4A:7-3.1(a) states, in pertinent part, that employment discrimination or harassment based upon a protected category, such as race and gender is prohibited.

N.J.A.C. 4A:7.3-2(i) provides, in pertinent part, that at the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.

In this matter, K.D., a Caucasian female, alleged that she was subjected to discrimination based on race and gender by P.F., an African-American male former Assistant Division Director. Specifically, K.D. alleged that P.F. violated the State Policy by comparing her to Megyn Kelly, who is a Caucasian female newscaster. She claims that the reference was a derogatory comment which implied that she is a "white racist." Further, when K.D. objected to the comparison, P.F. responded, "I just don't get it" and "you are fired."² K.D. also alleges that P.F. made other derogatory comments based on race and took other negative actions against her based on race and/or gender. K.D. states that since Megyn Kelly is a Caucasian female, P.F. would not have made that reference if she was not also a Caucasian female. Therefore, she claims that she was subjected to derogatory comments based on her membership in protected classes, race and gender. The EEO determined that K.D.'s allegations did not touch the State Policy as it concluded that there was no evidence or allegation that the alleged conduct stemmed from K.D.'s membership in a protected class. Therefore, the EEO did not open a formal investigation. However, the Civil Service Commission (Commission) disagrees and finds that being compared to being "like Megyn Kelly" could implicate the State Policy. Therefore, this comment, as well P.F.'s other actions, needs to be examined in the context of the situation. Additionally, K.D. stated that in an after-presentation critique which took place approximately two weeks after the presentation, P.F.

² The record indicates that K.D. was not actually fired.

yelled, insulted and denigrated her and “white people” loudly. She indicated that she identified two witnesses to the yelling; yet those witnesses were not interviewed. Therefore, the Commission finds that the investigation is incomplete and remands it back to the EEO for further investigation. Specifically, the EEO shall open a formal investigation and interview the two witnesses that K.D. identified who were not interviewed as well as any other witnesses, and analyze any other evidence identified during the formal investigation which could potentially provide greater context concerning the “like Megyn Kelly” comment as well as other actions taken by P.F. against K.D.

ORDER

Therefore, it is ordered that this appeal be remanded to the Office of Equal Employment Opportunity for further investigation as described above.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 15TH DAY OF APRIL, 2020

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